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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,477	03/26/2004	Carl R. Nicolia	0644-031015	8871

7590 11/07/2005

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EXAMINER

RAMIREZ, RAMON O

ART UNIT PAPER NUMBER

3632

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,477

Applicant(s)

NICOLIA ET AL.

Examiner

RAMON O. RAMIREZ

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 17-21 is/are rejected.
- 7) ☒ Claim(s) 15 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/20/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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Detailed Action

This is the first Office Action corresponding to original filing. The application contains 21 claims.

Information Disclosure Statement

Receipt is acknowledged of Information Disclosure Statement filed Sep 20, 2004, which has been reviewed by the Examiner.

Drawings

The drawings are objected to for the reasons set forth in Draftsperson's attached PTO-948. Correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, and 4-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Labor ServerTM illustration (from now on referring as the illustration) in view of Garcia (2004/0222179A1).

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The illustration shows a frame having two uprights connected by cross bars at each of their ends, and a vertical adjusted support member having a hole for receiving an arm fixture.

Garcia discloses a frame having two uprights (14b, 14c) connected by cross bars (14a, 16a) which are horizontally adjustable to adjust the distance between the uprights.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the cross bars shown by the illustration horizontally adjustable as shown by Garcia to adjust the distance between the uprights to make the device more versatile. The adjusting means claimed here are considered to be mechanical equivalent to the one shown by Garcia, and consequently the use of one over the others is considered as an obvious matter of expediency. With respect to the support member, the specific use of fastening means, the use of threads on the opening are also considered as matter of engineering choice. These means are well known and widely use for those skilled in the art. As to the method claim the device set forth above can be used following the recited method steps.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Labor ServerTM illustration in view of Garcia and Vrane (Pat No 6,803,521).

The patent to Vrane discloses the use of calibrated markings use to facilitate the aligned of two adjusting members. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the invention set forth above with

calibrated markings as shown by Vrane to facilitate the alignment of the upright members.

Allowable Subject Matter

Claims 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gonzalez (5,407,171), Chen (5,617,962) and Dodge (5,660,637) all show adjustable frame devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMON O. RAMIREZ whose telephone number is (571) 272-6821. The examiner can normally be reached on MONDAY-FRIDAY, IST FRIDAY OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor ROBERT OLSZEWSKI can be reached on (571) 272-6788.

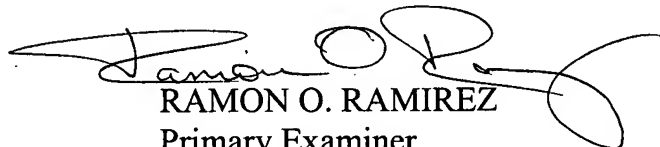
The fax phone number for the organization where this application or proceeding is assigned is 571 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A shortened period for response to this Office Action expires **THREE MONTHS** from the mailing date of this action.

ROR
November 1, 2005



RAMON O. RAMIREZ
Primary Examiner
Art Unit 3632